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No. 00-1135

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

DWAYNE JAMES, JEWEL A. JAMES, A MINOR BY NEXT FRIEND LOUISE KARTER, AND LOUISE KARTER, AS ADMINISTRATRIX OF THE ESTATE OF ROSA J. OWOLABI,
Petitioners,

v.

MAZDA MOTOR CORPORATION;
MAZDA MOTOR OF AMERICA, INC.;
TOKAI RIKA CO., LTD.,
Respondents,

AND JOHN DOE.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the United States Court of Appeals for the Eleventh Circuit properly held that the National Traffic and Motor Vehicle Safety Act of 1966 and Federal Motor Vehicle Safety Standard 208 preempt petitioners' automotive product liability tort claim, which alleged that respondents' 1994 Mazda Protegé was defectively designed because it was equipped with a "passive" occupant restraint system expressly permitted by Federal Motor Vehicle Safety Standard 208 and because it allegedly failed to warn that the "passive" occupant restraint system permitted under federal law constituted a "defect" under Georgia law?

RULE 29.6 STATEMENT

MAZDA MOTOR CORPORATION

(1) Ford Motor Company owns more than 10% of Mazda Motor Corporation's stock.

(2) Mazda Motor Corporation has no parent corporation.

MAZDA MOTOR OF AMERICA, INC.

(1) Mazda Motor of America, Inc.'s parent company is Mazda Motor Corporation.

TOKAI RIKA CO., LTD.

(1) Toyota Motor Corporation owns more than 10% of Tokai Rika Co., Ltd's stock.

(2) Tokai Rika Co., Ltd. has no parent corporation.

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AND JOHN DOE.

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RESPONDENTS' BRIEF IN OPPOSITION

Petitioners ask this Court to revisit an issue fully addressed less than nine months ago in *Geier v. American Honda Motor Company, Inc.*, 529 U.S. 861, 120 S. Ct. 1913 (2000): the preemptive effect of Federal Motor Vehicle Safety Standard ("FMVSS") 208, 49 C.F.R. § 571.208. Ignoring *Geier*, petitioners argue that FMVSS 208 does not preempt state law tort claims that foreclose passive restraint options specifically available to respondents and other automobile manufacturers under the regulation. They further argue that *Geier*

undermines the well-reasoned preemption analysis found in *Irving v. Mazda Motor Corp.*, 136 F.3d 764 (11th Cir.), *cert. denied*, 525 U.S. 1018 (1998).

As noted by the court below, "[w]e are not sure that [petitioners] have read the same *Geier* opinion that we have read." (Pet. App. at A8). This Court's decision in *Geier* does not weaken the Eleventh Circuit's analysis in *Irving* or in this case. Instead, it clearly supports the Eleventh Circuit's conclusion that petitioners' state law tort claims are impliedly preempted by FMVSS 208 and its authorizing legislation, the National Traffic and Motor Vehicle Safety Act ("the Safety Act").

STATEMENT OF THE CASE

A. Factual Background

This case arises out of a three-vehicle accident that occurred on Interstate 75 in Atlanta, Georgia on February 16, 1995. Petitioners' decedent, Rosa J. Owolabi, was driving her 1994 Mazda Protegé southbound on Interstate 75, when a large van on her right allegedly began to move leftward into her lane. Trying to avoid the van, Ms. Owolabi also moved leftward, losing control of her car and crossing two lanes of traffic as she headed toward the median barrier. Ms. Owolabi's Protegé bounced off the barrier, spun counterclockwise, and was struck by another southbound vehicle. Ms. Owolabi died shortly after the accident from blunt force abdominal trauma.

The 1994 Mazda Protegé driven by Ms. Owolabi was equipped with a passive restraint system consisting of a motorized (automatic) shoulder belt, knee bolsters, and an anti-submarining seat. The vehicle also was equipped with a manual lap belt. Ms. Owolabi was not wearing her lap belt at the time of the accident.

Petitioners subsequently filed this lawsuit, alleging that an automatic shoulder belt/manual lap belt restraint system is

inherently dangerous when the lap belt is not in use. They argued that the Protegé should have been equipped with a three-point motorized lap/shoulder belt, a door-mounted three-point passive restraint system, or a driver's side air bag. (*See* Pet. at 9 n.5). Petitioners also claimed that respondents failed to warn about dangers allegedly posed by a seat belt system with a manual lap belt.

B. The Summary Judgment Proceedings and *Irving*

After discovery, respondents moved for summary judgment on preemption grounds, citing the Eleventh Circuit's *Irving* decision. In *Irving*, the Eleventh Circuit considered the preemptive effect of FMVSS 208 on claims challenging a manufacturer's decision to use an automatic shoulder belt/manual lap belt restraint system. Like petitioners here, the *Irving* plaintiff claimed this design was defective, given the dangers allegedly associated with not wearing the lap belt and the manufacturer's failure to warn of those dangers.

Addressing the manufacturer's preemption argument, the *Irving* court noted that FMVSS 208 intentionally offered auto manufacturers a choice in determining which type of passive restraint system to place in vehicles. 136 F.3d at 768. The available options included the automatic shoulder belt/manual lap belt system used in the *Irving* car. Thus, the *Irving* plaintiff had sued the manufacturer for exercising an option specifically permitted by Congress through FMVSS 208. The court concluded that the plaintiff's state law design defect claim conflicted with federal law, requiring summary judgment for the manufacturer. As the court explained, the design claim was impliedly preempted because a state cannot impose common law damages on manufacturers for "doing what a federal act or regulation authorized them to do." *Id.* at 769 (quoting *Taylor v. General Motors Corp.*, 875 F.2d 816, 827 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990)). Furthermore, summary judgment was proper on the failure to warn allegation, which the plaintiff tied directly to the design

defect claim. Since the design claim was preempted, "there was no defect about which to warn." *Id.* at 770.

Relying on *Irving*, the district court granted respondents' motion for summary judgment in this case. The court determined that the motorized shoulder belt/manual lap belt restraint system in the 1994 Mazda Protegé complied with FMVSS 208. It further concluded that—as in *Irving*—petitioners were suing respondents for exercising a restraint system option explicitly permitted by Congress and FMVSS 208. (Pet. App. at A24). Accordingly, FMVSS 208 impliedly preempted petitioners' claims and demanded summary judgment. (*Id.* at A24-26).

C. The Eleventh Circuit's Decision

On appeal, the Eleventh Circuit affirmed the district court's grant of summary judgment to respondents. The appellate court agreed that the Mazda Protegé restraint system complied with FMVSS 208 and observed that "this case is on all fours with *Irving*." (*Id.* at A5-6). It further noted that "[i]f *Irving* is still good law, [petitioners'] appeal fails." (*Id.* at A6). Finding *Irving* alive and well, the Eleventh Circuit first dismissed petitioners' claim that the *Irving* decision violated prior Eleventh Circuit precedent in *Myrick v. Freuhauf Corp.*, 13 F.3d 1516 (11th Cir. 1994), *aff'd sub nom. Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995), and *Doyle v. Volkswagenwerk Aktiengelellschaft*, 114 F.3d 1134 (11th Cir. 1997). The circuit court next addressed petitioners' argument that this Court's decision in *Geier*, issued after the district court's summary judgment ruling, undermined *Irving*. Rejecting this argument, the court found that *Irving* applied the exact preemption analysis endorsed by *Geier* to determine "if a state common law action 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" (*Id.* at A9 (quoting *Geier*, 120 S. Ct. at 1921)).

REASONS FOR DENYING THE PETITION

A. The Eleventh Circuit Opinion Properly Followed this Court's Decision in *Geier* and is Consistent with Other Federal Appellate Court Preemption Rulings.

Trying to create grounds for certiorari, petitioners claim that the Eleventh Circuit's ruling below conflicts with other state and federal court decisions and ignores *Geier*. They are wrong. No decision from another court requires certiorari in this case. On the contrary, this Court's *Geier* decision resolved the question of implied preemption under FMVSS 208. The Court need not address this issue again.

1. The *Geier* Decision Fully Addressed Preemption Under FMVSS 208.

In *Geier*, this Court considered whether FMVSS 208 preempted the plaintiffs' claims that a 1987 Honda Accord was defectively designed because it lacked an airbag. The Court first found no express preemption under the Safety Act or FMVSS 208. *Geier*, 120 S. Ct. at 1918. Turning to implied preemption, it next addressed whether the plaintiffs' claims conflicted with FMVSS 208. To resolve this question, the Court examined the history behind the regulation. It noted that in the 1970s, the Department of Transportation ("DOT") grew concerned about low seat belt use in this country and began encouraging manufacturers to install passive restraint devices in automobiles. *Id.* at 1923. In 1984, the DOT promulgated the version of FMVSS 208 at issue in *Geier* and in this case. That version required a gradual phase-in of passive restraints, but offered manufacturers options for complying with the passive requirements. The DOT specifically decided not to mandate any particular passive restraint designs. For various reasons, the Department wanted manufacturers to have *choices*:

> the standard deliberately provided the manufacturer with a range of choices among different passive restraint devices. Those choices would bring about a mix of different devices introduced gradually over time; and FMVSS 208 would thereby lower costs, overcome technical safety problems, encourage technological development, and win widespread consumer acceptance—all of which would promote FMVSS 208's safety objectives.

Id. at 1922.

The regulation purposefully sought a mix of different designs, "allowing manufacturers to choose among different passive restraint mechanisms, such as airbags, automatic belts, or other passive restraint technologies" to satisfy its performance requirements. *Id.* at 1924. The regulation thus embodied a "policy judgment that safety would best be promoted if manufacturers installed alternative protection systems in their fleets rather than one particular system in every car." *Id.* (internal quotations omitted).

Given this extensive regulatory history and the clear purpose behind FMVSS 208, the Court found the plaintiffs' "no airbag" claim impliedly preempted. The *Geier* suit tried to impose on manufacturers a common-law tort duty not required by FMVSS 208 for 1987 model-year cars: to install airbags in all vehicles. As noted by the Court, the suit conflicted directly with the choice element in FMVSS 208 and restricted the passive restraint options available to manufacturers. It "would have presented an obstacle to the variety and mix of devices the federal regulation sought" and "also would have stood as an obstacle to the gradual passive restraint phase-in that the federal regulation deliberately imposed." *Id.* at 1925. Because the plaintiffs' state tort action undermined these federal objectives, the suit was preempted. *Id.* at 1927.

Boiled down to its simplest terms, *Geier* teaches that a state tort suit cannot restrict the passive restraint options available to manufacturers under FMVSS 208. The DOT and its subdivision, the National Highway Traffic and Safety Administration ("NHTSA"), created those options for a reason. Any lawsuit that removes passive restraint options under FMVSS 208 frustrates the regulatory scheme and cannot be allowed to proceed. *Id.* at 1925.

2. The Eleventh Circuit Properly Applied *Geier* and *Irving* in Reaching its Preemption Decision.

The Eleventh Circuit foreshadowed the *Geier* decision in *Irving*. Like this Court, the *Irving* court concluded that preemption prevents a plaintiff from suing a defendant "for exercising an option explicitly permitted [under FMVSS 208] by Congress." 136 F.3d at 769. The *Geier* opinion does not draw *Irving* into question, as petitioners claim. On the contrary, it offers a ringing endorsement.

Petitioners present no clear basis for rejecting *Irving* or finding some conflict between that decision and *Geier*. They simply argue that their lawsuit will improve vehicle safety. Their lawsuit, however, will do just what *Geier* forbids—usurp the DOT's authority and frustrate the complex regulatory purpose behind FMVSS 208.[1]

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[1] Throughout their petition, petitioners cite to the amicus brief filed by the United States in *Geier*. They apparently want this Court to believe that the United States would not endorse preemption in this case. As made clear in its *Geier* amicus brief, however, the United States clearly supports preemption under FMVSS 208. (Brief of the United States, at 15-29).

a. The Restraint System Used in the 1994 Mazda Protegé Was An Option Available to Manufacturers Under FMVSS 208.

The Eleventh Circuit and the district court concluded—and petitioners do not question here—that the passive restraint system installed in the 1994 Mazda Protegé was a choice available to respondents under FMVSS 208. (Pet. App. at A5, A24). The system, which consisted of a two point automatic shoulder belt, knee bolsters, and an anti-submarining seat, complied with the performance criteria established in FMVSS 208 S4.1.2.1, the provision applicable to cars manufactured on or after September 1, 1989, but before September 1, 1996. (*Id.*) In addition, the system was equipped with a manual lap belt. The automatic shoulder belt/manual lap belt system was well recognized as an appropriate belt system under FMVSS 208.

In 1980 and 1981, Toyota developed an automatic shoulder belt system with knee bolsters plus a manual lap belt. The Toyota automatic belt system had a dramatically higher usage rate than traditional, manual restraint systems and met the dynamic crash and injury criteria of FMVSS 208 *even without the lap belt*. As a result, NHTSA gave the system's inventor, Masanao Motonami, its Safety Award For Engineering Excellence for his design and its important contribution to automotive safety. Significantly, NHTSA reported in 1984 that the usage rate for this system was over ninety percent, higher than any other automotive restraint system. *See* 49 Fed. Reg. 28962, 28983-84.

This type of restraint system—the same system used in the 1994 Mazda Protegé—was an accepted option for automobile manufacturers. Quite deliberately, FMVSS 208 did not mandate that manufacturers choose one form of passive restraint over another. *See* 49 Fed. Reg. at 28999-29000. Rather, it set forth performance requirements for passive restraints and, for passive belts, established the following

guidelines: "a seat belt assembly that requires no action by vehicle occupants (hereinafter referred to as 'automatic belt') may be used to meet the crash protection requirements of any option under S4 [including S4.1.2.1] and in place of any seat belt assembly otherwise required by that option." 49 C.F.R. § 571.208, S4.5.3 (1975).

Thus, FMVSS 208 specifically authorizes an automatic shoulder belt that meets its performance requirements, with or without any type of lap belt—manual or automatic. This rule has never changed. Indeed, on September 10, 1990, NHTSA reaffirmed that an automatic shoulder belt restraint system that meets the applicable performance requirements "[is] not required to provide lap belts either as part of the automatic belt or as a separate manual belt." (*See* Exhibit A to Respondents' Brief in Support of Motion for Summary Judgment, R-2-39 (September 10, 1990 letter from Paul Jackson Rice, Chief Counsel, National Highway Traffic Safety Administration, to Rembert Ryals, Esq.)). In 1992, NHTSA again instructed that "an automatic belt consisting solely of a shoulder belt may be used pursuant to S4.5.3 of Standard No. 208 to meet the crash protection requirements of the standard and in place of any seat belt assembly that would otherwise be required." (*See* Exhibit B to Respondents' Brief in Support of Motion for Summary Judgment, R-2-39 (June 5, 1992 letter from Paul Jackson Rice, Chief Counsel, National Highway Traffic Safety Administration, to Robert S. McLean, Esq.)).

As noted in *Geier*, the DOT determined in 1984 that mandating a single type of passive restraint was not in the public interest, because any such mandate would risk "killing or seriously retarding development" of other systems. 49 Fed. Reg. at 29001. Accordingly, the DOT believed the auto industry should have "latitude" regarding what passive restraints to install in cars. "Flexibility" was the benchmark, and manufacturers could comply with FMVSS 208's passive

restraint requirement with any adequate technology. *Id.* at 28997, 29000. That technology specifically and prominently included options such as an automatic shoulder belt system with or without a manual lap belt. Indeed, the DOT noted in 1984 that (1) those systems were the only systems in significant use with a proven track record, *id.* at 28965; (2) their usage rates were high, *id.* at 28983-84; (3) they were relatively inexpensive, *id.* at 28989-90; and (4) they were available "immediately," of particular importance during the passive restraint phase-in, *id.* at 28999.

b. Petitioners' Suit Seeks to Foreclose A Well-Recognized Option Under FMVSS 208.

Respondents chose a well-recognized restraint system option for the 1994 Mazda Protegé. That option met the performance criteria and flexibility objectives of FMVSS 208. Petitioners now want this system declared unlawful, despite the federal government's express authorization of it. As noted by the district court, petitioners do not claim that an alternatively designed automatic shoulder belt/manual lap belt restraint system—such as a system with different anchor points—would be without defect. Instead, plaintiffs criticize respondents' *choice of this system*: "[Petitioners] are clearly alleging that the restraint system [respondents] chose is inherently defective because an automatic shoulder belt and manual lap belt restraint system will never provide pelvic restraint automatically." (Pet. App. at A23). They further claim that respondents should have equipped the Protegé with an airbag or a belt system utilizing an automatic lap belt.[2] (Pet. at 9 n.5; Pet. App. at A23-24).

Without doubt, petitioners' defect claims are preempted under *Geier* and *Irving*. If allowed to proceed, those claims

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[2] Petitioners admit that *Geier* preempts any claim that the 1994 Mazda Protegé should have included an airbag. (Pet. at 2-3).

would foreclose an option clearly available to manufacturers under FMVSS 208, thereby presenting "an obstacle to the variety and mix of devices that the federal regulation sought." *Geier*, 120 S. Ct. at 1925. Petitioners want to impose common law damages on respondents for selecting a passive restraint system endorsed by the federal government and specifically permitted by FMVSS 208. They must not be allowed to do so. Respondents chose a seat belt system that federal regulations permitted them to choose. They cannot be sued for this choice. The Eleventh Circuit properly found that petitioners' design defect allegations frustrate the purpose of FMVSS 208, placing those allegations clearly within the doctrine of implied preemption. *Id.*

Petitioners' failure to warn claim similarly undermines FMVSS 208. The failure to warn allegation is inextricably linked to the design defect claim. Petitioners argue that respondents had a duty to warn of the allegedly dangerous and defective condition presented by a seat belt system without an automatic lap belt. The seatbelt system in the 1994 Mazda Protegé, however, is not—and cannot be deemed—defective under state tort law. This seat belt system was a viable option under FMVSS 208. Imposing tort liability for failure to warn of alleged "dangers" associated with the system frustrates the options available under the regulation; a manufacturer should not be required to answer in tort for choosing an option permitted by FMVSS 208. In short, petitioners cannot circumvent preemption "by relying on a duty-to-warn theory of liability." *Pak v. Chrysler Motor Corp.*, 1990 U.S. Dist. LEXIS 16349, at *5 (E.D. Pa. 1990), *aff'd* 941 F.2d 1200 (3d Cir. 1991) (per curiam); *see also Irving*, 136 F.3d at 770 ("Because Plaintiff's defective-design claim is preempted by FMVSS 208, there was no defect about which to warn. Plaintiff's failure-to-warn claim—which is, in this case, dependent on the preempted defective-design claim—was properly dismissed.").

3. The Eleventh Circuit's Opinion Does Not Conflict with Any Post-*Geier* Analysis.

Petitioners also claim that the Eleventh Circuit's decision conflicts with a 1998 opinion from the Texas Supreme Court, a 1996 opinion from the Arizona Supreme Court, and an April 2000 decision from the Sixth Circuit. *See King v. Ford Motor Co.*, 209 F.3d 886 (6th Cir.), *cert. denied*, 121 S. Ct. 386 (2000); *Hyundai Motor Co. v. Alvarado*, 974 S.W.2d 1 (Tex. 1998); *Hernandez-Gomez v. Volkswagen of America, Inc.*, 917 P.2d 238 (Ariz. 1996). None of these opinions provides grounds for certiorari.

Each case cited by petitioners was decided *prior* to *Geier* and lacked the benefit of *Geier*'s preemption analysis. In *Alvarado*, for example, the Texas Supreme Court sought to resolve the following issue: "whether the Safety Act and the regulations under it preempt common-law damage claims if the manufacturer chooses an option permitted by the federal regulations." 974 S.W.2d at 4. Before discussing preemption, the *Alvarado* court noted that "[b]ecause the United States Supreme Court has not addressed the particular issue before us, we must independently analyze Hyundai's contention that the Alvarados' claims are preempted based upon the lessons we draw from relevant Supreme Court authority." *Id.* at 6. Without *Geier*'s guidance, the Texas court found no preemption. *Id.* at 13; *see also Hernandez-Gomez*, 917 P.2d at 247-48 (finding, pre-*Geier*, that state tort liability imposed for selecting an option authorized by FMVSS 208 does not interfere with Congress' methods). Any conflict or confusion created by such "no preemption" rulings has been resolved by *Geier*. The United States Supreme Court need not step in again to address preemption under FMVSS 208.

The Sixth Circuit's decision in *King* also does not support certiorari. Like the Texas and Arizona state opinions, *King* was decided before *Geier*. Furthermore, the *King* case is

distinguishable from, and thus does not conflict with, the Eleventh Circuit's decision here. The *King* plaintiffs did not argue—as petitioners do—that a two-point automatic seat belt with a manual lap belt is inherently defective. 209 F.3d at 892. Rather, the *King* plaintiffs claimed that "the specific design was defective due to failure to use load limiters and/or change the location of the knee bolster and/or change the location of the belt anchor." *Id.* Under *King*, because the plaintiffs were not challenging the manufacturer's overall decision to use an automatic shoulder belt/manual lap belt restraint system, their claims were not preempted by FMVSS 208. *Id.* at 892-93. The *King* opinion, therefore, is easily distinguishable from this case, which involves claims that the automatic shoulder belt/manual lap belt restraint option is inherently dangerous.[3] (*See* Pet. App. at A23 ("[Petitioners] are clearly alleging that the restraint system [respondents] chose is inherently defective because an automatic shoulder belt and manual lap belt restraint system will never provide pelvic restraint automatically.").

Despite petitioners' claims, other courts have construed *Geier* in a manner consistent with the Eleventh Circuit. In *Hurley v. Motor Coach Indus.*, 222 F.3d 377 (7th Cir. 2000), for example, the Seventh Circuit applied *Geier* to conclude that FMVSS 208 preempted the plaintiff's claim that a bus driver's seat should be equipped with an airbag, a three-point seat belt, knee bolsters, and a roll cage, rather than simply a two-point seat belt. The Seventh Circuit noted that the *Hurley* plaintiff's theory was "remarkably close" to the one

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[3] The *King* case also involved a claim that the manufacturer failed to warn of dangers allegedly associated with not wearing the lap belt portion of the restraint system. The Sixth Circuit's preemption discussion does not specifically address the failure to warn claim. *See King*, 209 F.3d at 891-93. To the extent *King* holds that such a failure to warn claim is not impliedly preempted, as petitioners suggest (*see* Pet. at 20), that ruling cannot survive *Geier*.

rejected in *Geier*. 222 F.3d at 381. FMVSS 208 explicitly gave bus manufacturers the option of equipping the driver's seat with only a two-point belt. Because the plaintiff's theory foreclosed this option, it was preempted: "[A]s in *Geier*, the decision to leave options open to bus manufacturers was made with specific policy objectives in mind. Hurley's suit, if successful, would undermine that policy objective and is preempted." *Id.* at 382; *see also Fisher v. Ford Motor Co.*, 224 F.3d 570, 573 (6th Cir. 2000) (noting that *Geier* supported district court decision that "state law could not require alternative [airbag] warning labels containing different language from that mandated by NHTSA" in FMVSS 208); *Lady v. Neal Glaser Marine, Inc.*, 228 F.3d 598 (5th Cir. 2000) (*Geier* supported conclusion that Federal Boat Safety Act preempted tort claim that boat was defective for failing to include propeller guard).

Petitioners have pointed to no post-*Geier* opinion that conflicts with the Eleventh Circuit's decision below. In fact, like the Eleventh Circuit, other courts have applied *Geier*'s preemption analysis outside of the "no airbag" claim context. The Eleventh Circuit properly construed *Geier* and other binding precedent in this case. Certiorari is neither necessary nor appropriate.

B. Any "Escape" Provision Endorsed by *Geier* Does Not Apply Here

To support certiorari, petitioners also try to take advantage of what they view as an "escape clause" in *Geier*'s analysis. (Pet. at 23). They argue that respondents knew—and have "admitted"—that the restraint system in the 1994 Mazda Protegé is dangerous, precluding preemption. They key on *Geier*'s reference to an extremely limited circumstance that might "escape" preemption. *Geier*, 120 S. Ct. at 1928. This potential escape valve does not help petitioners here.

1. Respondents Have Not Admitted Defect.

As an initial matter, respondents have *never* admitted that the 1994 Mazda Protegé restraint system is defective. On the contrary, respondents have vigorously defended a design that complies with FMVSS 208. To support their "admission" claim, petitioners cite—out of context—deposition testimony given by Hisao Muramoto, a Japanese engineer who testified through an interpreter. Mr. Muramoto, however, did not testify that the Protegé restraint system, which he helped design, is defective. He simply stated that the manual lap belt should be worn because it offers extra protection in certain types of accidents. As noted by Mr. Muramoto, the Protegé seat belt system could meet FMVSS 208 requirements *without* a lap belt. Nevertheless, respondents provided *additional* safety features by including a manual lap restraint. (Muramoto Dep. at 63; *see also* Pet. at 4 (quoting Muramoto testimony)).

In this case, petitioners criticize respondents for adding *more* safety features, concluding that this safety decision somehow makes the Protegé's restraint system "defective." They are wrong. Respondents selected a restraint system that the federal government expressly permitted them to use. That selection cannot create tort liability.[4]

2. The "Escape" Language in *Geier* Does Not Apply Here.

The *Geier* decision recognizes a *possible* preemption escape for limited claims that involve only a few cars and do not obstruct FMVSS 208's mixed fleet approach to passive restraints:

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[4] At points in their Petition, petitioners imply that FMVSS 208 is merely a "minimum" safety standard. (*See* Pet. at 22). As this Court has recognized, however, FMVSS 208 cannot be characterized as a "minimum" standard. *Geier*, 120 S. Ct. at 1922. Rather, it "deliberately provided the manufacturer with a range of choices among different passive restraint devices." *Id.*

> It is possible that some special design-related circumstance concerning a particular kind of car might require airbags, rather than automatic belts, and that a suit seeking to impose that requirement could escape pre-emption—say, because it would effect so few cars that its rule of law would not create a legal 'obstacle' to 208's mixed-fleet, gradual objective.

Geier, 120 S. Ct. at 1928. This escape possibility—which the Court noted was merely an open question, *id.*—does not apply here.

No design feature in the 1994 Mazda Protegé required installation of any particular restraint system. Respondents were free to choose from the passive restraint options permitted by FMVSS 208. Furthermore, the automatic shoulder belt/manual lap belt system ultimately selected was not restricted to only a few vehicles. Respondents, as well as numerous other auto manufacturers, have used this type of system in many vehicle models since its invention in the early 1980s. Petitioners claim that a vehicle equipped with an automatic shoulder belt/manual lap belt system cannot be safe. Their claim does not—in any way—fall within the potential escape provision referenced in *Geier*. *See id.* (noting that the *Geier* plaintiffs cannot escape preemption because "[t]hey have argued generally that, to be safe, a car must have an airbag"); *Hurley*, 222 F.3d at 382-383 (potential loophole discussed in *Geier* could not apply because the plaintiff "has pointed to nothing about the design of this particular bus that makes it different from the average 'bus with a gross vehicle weight rating of more than 10,000 pounds'").

C. The Court Has No Reason To Address This Preemption Issue Again

This Court has already addressed the preemptive effect of FMVSS 208. Petitioners have presented nothing that requires reexamination here. The *Geier* opinion clearly articulates the

Court's preemption analysis under FMVSS 208 and the Safety Act. No lower court has had difficulty applying the Court's decision, and additional guidance is not needed. The Supreme Court closed the loop on FMVSS 208 preemption in *Geier*.

Moreover, further Court analysis of the passive restraint options under FMVSS 208 will have no lasting usefulness. All model-year 1998 and later passenger vehicles must be equipped with airbags. *See* Pub. L. No. 102-240, § 2508. Beginning with the 1998 model year, therefore, the passive seat belt became obsolete in the United States. Claims relating to passive belt systems will steadily decline as consumers stop driving pre-1998 vehicles. Any pronouncement by this Court about passive seat belts will similarly fade in relevance. The Court should not spend time on a preemption issue that was fully addressed in *Geier* and that promises to become outdated in the near future.

CONCLUSION

Certiorari review is neither necessary nor appropriate in this case. Less than one year ago, the Court addressed the issues raised by petitioners and provided ample guidance to lower courts. Accordingly, respondents respectfully request that the petition for a writ of certiorari be denied.

Respectfully submitted,

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*Counsel of Record

Attorney for Respondents

APPENDICES

APPENDIX A

SEP 10, 1990

Rembert Ryals, Esq.
1177 Jadwin Avenue, Suite A
P.O. Box 1930
Richland, WA 99352

Dear Mr. Ryals:

This responds to your letter to Steve Kratzke of my Staff in which you asked for an interpretation of the requirements of Standards No; 208, *Occupant Cash Protection* and No. 209, *Seat Belt Assemblies* (49 CFR § 571.208 and § 571.209 respectively). Specifically, you asked whether manufacturers were required to install a lap belt at seating positions equipped with automatic belts certified as complying with the occupant protection requirements in Standard No. 208. Your letter indicated that you were particularly interested in the requirements that applied to 1980 model year cars. The answer to your question is no.

S4.1.2 of Standard No. 208 gives vehicle manufacturers a choice of three options for providing occupant crash protection. Option 1, set forth in S4.1.2.1, requires vehicle manufacturers to provide automatic protection at the front outboard seating positions, safety belts at all other seating positions, and *either* meet the lateral crash protection and rollover requirements by means of automatic protection systems *or* have manual safety belts at the front outboard seating positions such that those positions comply with the occupant protection requirements when occupants are protected by both the safety belts and the automatic protection. Option 2, set forth in S4.1.2.2, requires vehicle manufacturers to provide a safety belt at every seating position, have automatic protection for the front outboard seats, and have a warning system for the safety belts

provided. Option 3, set forth in S4.1.2.3, requires the manufacturer to install safety belts at every seating position and to have a warning system for those belts. All cars manufactured on or after September 1, 1989 must be certified as complying with Option 1.

However, S4.5.3 of Standard No. 208 contains an important proviso. This provides that an automatic belt system may be used to meet the crash protection requirements of any option set forth in 54.1.2 and in place of any safety belt system that would otherwise be required by that option.

I have enclosed a copy of the December 14, 1972 rule (36 FR 23725) that added the current version of S4.5.3 to Standard No. 208.

In telephone conversations with you, Mr. Kratzke bas explained that there is no requirement in the Federal safety standards that seating positions equipped with automatic belts include a lap belt either as part of the automatic belt or as a separate manual belt. Your letter indicates that you believe that two regulatory provisions appear to require a lap belt in 1980 Volkswagens at seating positions equipped with an automatic shoulder belt and knee bolsters.

First, you suggested that Option 1 (S4.1.2.1) of Standard No. 208 requires automobiles to meet lateral and rollover crash protection requirements, in addition to providing automatic protection in frontal crashes. This is an erroneous reading of S4.1.2.l(c). Manufacturers have the choice of certifying compliance with the lateral and rollover crash protection requirements (S4.1.2.l(c)(l)) or of providing manual safety belts at the front outboard seating positions such that the vehicle meets the protection requirement with a test dummy protected by both the safety belt and the automatic protection system (S4.l.2.l(c)(2)). When this latter option is chosen, the vehicle manufacturer could use the automatic safety belt in place of the specified manual safety belt, in accordance with

the provisions of S4.5.3. Hence, a manufacturer could certify compliance with Option 1 without providing a manual lap belt at seating positions equipped with an automatic shoulder belt and knee bolsters.

It is not clear, however, that Volkswagen chose to certify that its cars complied with Option 1 in Standard No. 208. In a January 30, 1974 notice (39 PR 3834; copy enclosed), NHTSA indicated its understanding that the Volkswagen automatic belts were certified as complying with Option 2. In that notice, the agency stated that S4.5.3 of Standard No. 208. "permits the use of the Volkswagen passive belt system to meet the perpendicular impact protection requirements of option two and to replace the required seat belt assemblies." If Volkswagen certified its vehicles as complying with Option 2, the requirements of Option 1 would not be relevant.

Second, you noted that S4.1(b) of Standard No. 209, *Seat Belt Assemblies* (49 CFR § 571.209) specifies that a seat belt assembly "shall provide pelvic restraint is provided, . . ." You suggested that the Volkswagen belt system without a lap belt does not appear to comply with this requirement of Standard No. 209.

As Mr. Kratzke explained to you in your telephone conversation, the applicability of Standard No. 209 to crash-tested automatic belts is addressed in S4.5.3.4 of Standard No. 208. That provision in Standard No. 208 provides that automatic belts that are not required to meet the crash protection requirements shall conform to the webbing, attachment hardware, and assembly performance requirements of Standard No. 209. The agency explained this provision as follows in the 1971 notice that added this language to standard No. 208, "On reconsideration, the NHTSA has decided that relief from Standard No. 209 should be afforded if a passive belt is capable of meeting the occupant crash protection requirements of S5.1 in a frontal perpendicular impact and amends S4.5.3 accordingly." 36 FR

23725; December 14, 1971. Thus, automatic belts that are certified as complying with the occupant crash protection requirements of Standard No. 209 are not generally subject to the requirements of Standard No. 209.

In a September 12, 1979 letter from this office to Mr. Frank Pepe (copy enclosed), NETSA explained that automatic belts must meet the adjustment requirements of S7.1 of Standard No. 208 and those parts of Standard No. 209 that are incorporated by reference in S7.1 of Standard No. 208. That letter also noted that automatic belts installed to meet the frontal crash protection requirements are exempted from all other requirements of standard No. 209 by virtue of S4.5.3.4 of Standard No. 208. Since S4.1(b) of Standard No. 209 is not incorporated by reference in S7.1 of Standard No. 208, seating positions equipped with automatic belts that are certified as complying with the frontal crash protection requirements are not required to provide lap belts either as part of the automatic belt or as a separate manual belt.

I hope this information is helpful. If you have any more questions about this issue, feel free to contact Mr. Kratzke at this address or by telephone at (202) 366-2992.

Sincerely,

_____

Paul Jackson Rice
Chief Counsel

Enclosures

APPENDIX B

[LOGO]

400 Seventh Street.
Washington. D.C. 20590

US. Department.
of Transportation

National Highway.
Traffic Safety
Administration.

Jun 5, 1992

Robert S. McLean, Esq.
King. & Spalding
191 Peachtree Street
Atlanta, GA 30303-1763

Dear Mr. McLean:

This responds to your request for additional information on the requirements applicable to automatic belts. In response to your March 9, 1992 letters, I sent you a March 30, 1992 letter explaining how our requirements apply to automatic belts. Specifically, I explained that an automatic shoulder belt is not a Type 2a belt, as defined in Standard No. 209, and that automatic belts are not required to include any warnings required for Type 2a belts. I noted that all the requirements applicable to automatic belts are set forth in S4.5.3 of Standard No. 208.

On May 19, 1992, you sent a FAX to Steve Kratzke of this office asking for a further clarification of the requirements applicable to automatic belts. You followed the FAX up with a telephone call on May 27, 1992, during which you explained that you were seeking an opinion from me with respect to an interpretation that is being asserted in litigation in which you are involved. The issue involves the crash protection requirements in Standard No. 208. S4.1.2 of Standard No. 208 gives vehicle manufacturers a choice of

three options for providing occupant crash protection and sets forth specific belt installation requirements for each option. However, S4.5.3 of Standard No. 208 contains an important proviso. This section provides that an automatic seat belt assembly may be used to meet the crash protection requirements of any option set forth in S4.1.2 and in place of any seat belt assembly that would otherwise be required by that option.

You explained that another party in your litigation is asserting that an automatic belt, which consists solely of a shoulder belt, could not be used pursuant to S4.5.3 of Standard No. 208 to meet the crash. protection requirements of any option in S4.1.2 of Standard No. 208. This is so because, according to this argument, an automatic belt which consists. solely of a shoulder belt is not a "seat belt assembly . "The reason it is asserted that a shoulder belt alone cannot be a "seat belt assembly" is that S4.1(b) of Standard No. 209 requires that "a seat belt assembly shall provide pelvic restraint." Since an automatic belt that consists solely of a shoulder belt does not provide pelvic restraint, this argument concludes that automatic belts that do not provide pelvic restraint must not be "seat belt assemblies" within the meaning of Standard No. 209. if these belts are not seat belt assemblies, they are not eligible to be used pursuant to S4.5.3 of Standard No. 208 in place of seat belt assemblies otherwise required by Standard No. 208.

This argument is without merit. Contrary to the assertion in this argument, automatic belts which consist solely of a shoulder belt are "seat belt assemblies" within the meaning of 53 of Standard No. 209. That section defines a "seat belt assembly" as "any strap, webbing, or similar device designed to secure a person in a motor vehicle in order to mitigate the results of any accident, including all necessary buckles and other fasteners, and all hardware designed for installing such seat belt assembly in a motor vehicle." An automatic belt

consisting solely of a shoulder belt falls squarely within this definition. Thus, an automatic belt consisting solely of a shoulder belt may be used pursuant to S4.5.3 of Standard No. 208 to meet the crash protection requirements of the standard and in place of any seat belt assembly that would otherwise be required.

It may be that this argument was offered because the person was not aware that automatic belts are not generally subject to the provisions of Standard No. 209 that apply to manual seat belt assemblies, as explained in my March 30, 1992 letter to you. Thus, S4.1(b) of Standard No. 209 does not apply to automatic belts. In place of Standard. No. 209's general requirements for manual seat belt assemblies, S4.5.3 of Standard No. 208 sets forth special requirements for automatic belts. No provision of S4.5.3 of Standard No. 208 precludes the use of automatic belts that consist solely of a shoulder belt.

I hope this information clarifies any lingering questions you may have had. As before, if you need any further information on the requirements applicable to automatic belts, feel free to contact Steve Kratzke at this address or by telephone at (202) 366-2992.

Sincerely,

/s/ Paul Jackson Rice
PAUL JACKSON RICE
Chief Counsel